

BEFORE THE
GOVERNING BOARD
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED EMPLOYEES
OF THE FOLSOM CORDOVA UNIFIED
SCHOOL DISTRICT,¹

OAH No. 2011010980

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, Office of Administrative Hearings (OAH), State of California, on March 29, 2011, in Folsom, California.

Kim Kingsley Bogard, Attorney at Law,² represented the Folsom Cordova Unified School District (District). Marty Baumann, Assistant Superintendent of Human Resources and Cathy Runnels, Director of Human Resources were present.

Andrea Price, Attorney at Law,³ represented the majority of respondents. The appearance of represented respondents was waived. Elisa Avila, Faith Caplan, Kimberly Knecht, Jessica Mayhugh, Kristina Ross, Mathew Seal-Mayr timely returned their request for hearing and Notice of Defense, but were self-represented.⁴ No self-represented party was present. Michael Itkoff, President of Folsom Cordova Education Association was present.

¹ List of Certificated Employees of the San Juan Unified School District who the Superintendent served with a Layoff Notice. (Attachment A.)

² Kim Kingsley Bogard, Attorney at Law, Kingsley Bogard Thompson, L.L.P., 50 Iron Point Circle, Suite 110, Folsom, California 95630.

³ Andrea Price, Attorney at Law, Langenkamp Curtis & Price, L.L.P., 1331 Garden Highway, Suite 300, Sacramento, California 95833-9773.

⁴ Mathew Seal-Mayr timely requested a hearing. His appearance was waived based on information from counsel that he entered into the stipulation.

The matter was submitted on March 29, 2011, and the record remained open for receipt of the parties' pending stipulations. Stipulations resolving all outstanding issues were received by OAH on April 27, 2011. The Stipulated Layoff Agreement is attached as Attachment D (signature pages of certificated employees omitted).⁵

FACTUAL FINDINGS

1. Deborah Bettencourt is the Superintendent of the Folsom Cordova Unified School District (District). She performed her duties solely in her official capacity.

2. Before February 17, 2011, the Superintendent determined that funding for the 2011-2012 school year would be reduced, thereby necessitating the reduction or elimination of certain particular kinds of services (PKS). The Superintendent recommended to the Board that certain particular kinds of services be reduced or eliminated, affecting employees occupying 78.89 full-time equivalent (FTE) positions. The Superintendent's resolution to eliminate and reduce teaching services was made solely for the welfare of students.

3. On February 17, 2011, the Board adopted Resolution No. 02-17-11-26, providing for the reduction or elimination of PKS, amounting to 78.89 certificated positions. The PKS Resolution is attached as Attachment B.

4. Also on February 17, 2011, the Board adopted Resolution No. 02-17-11-27, specifying criteria to be used in determining the order of termination of certificated employees who first rendered paid service as probationary teachers on the same date (tie-breaking criteria). The Tie-Breaker Resolution states in relevant part:

- 1) The following criteria are authorized and directed to be applied, in the order listed, to determine the relative seniority of those certificated employees who first rendered paid probationary service on the same day:
 - a. Possession of a credential which is needed by the school program;
 - b. Breadth of credentials possessed (including BCLAD/CLAD, National Board Certification and other certificates);
 - c. Bilingual certification or skill where need for language exists;
 - d. Lottery number assigned pursuant to the certificated layoff conducted during the summer of 2010 under Education code section 44955.5, if any;

⁵ Attachment D is the Stipulated Layoff Agreement of the Parties with signature page of counsel. Counsel are in possession of the signature pages for the certificated employees. These pages are also filed with OAH.

- e. All other factors deemed equal, by lot.
- 2) The Board hereby approves the exercise of judgment of the District Superintendent, or designee, in applying the criteria set forth above.

5. On March 1, 2011, the Superintendent served on persons affected by the reduction and elimination of PKS a “Notice of Recommendation That Services Will Not Be Required” for the ensuing 2011–2012 school year (Layoff Notice or Notice). The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed a Resolution reducing or discontinuing PKS in order to reduce certificated staff. The Notice included copies of the PKS and Tie-Breaker Resolutions.

6. On March 1, 2011, the Superintendent served on persons affected by the reduction and elimination of PKS a “Precautionary Notice That Services Will Not Be Required” for the ensuing 2011–2012 school year (Precautionary Notice). The Precautionary Notice stated that the Superintendent had commenced a layoff for the ensuing school year that could result in termination of permanent and probationary certificated employees pursuant to Education Code sections 44949 and 44955. The Precautionary Notice stated that the District did not believe the recipient would be subject to the layoff. The Notice included copies of the PKS and Tie-Breaker Resolutions.

Categories of employees who received a Precautionary Notice are: regular certificated employees, temporary certificated employees, probationary certificated employees, and previously employed certificated employees.

7. On March 1, 2011, the Superintendent served on persons affected by the reduction and elimination of PKS, notices of release/non-reelection. The Notices of Release were served on certificated temporary employees and administrators. (Ed. Code, §§ 44951 and 44954, subd. (b).)

8. Respondents timely requested a hearing to determine if there was cause for not re-employing them for the ensuing school year. Several certificated employees did not request a hearing pursuant to Education Code section 44949, subdivision (b). They therefore waived their due process rights in this matter. (see Attachment C – Procedural Status Chart/Alpha 2011 which identifies employees who waived their due process rights.)

9. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, required accompanying documents, and blank Notices of Defense were timely served on those employees.

- 10. Respondents timely filed Notices of Defense to the Accusations.

11. *Rescissions.* On April 27, 2011, the District agreed to rescind the Layoff Notice issued to Don Isbell. As to Mr. Isbell, the Accusation and Notice of Hearing are withdrawn.

12. *Skipping.* “Junior employees may be given retention priority over senior employees only if they possess special skills or capabilities which their more senior counterparts lack.” (Ed. Code, § 44955, subd. (d)(1); *Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.) Pursuant to the Stipulation, the parties agreed that the following programs within the District will be skipped:

- a. FLES – Foreign Language Elementary School.
- b. TUPE – Tobacco Use Prevention Program.
- c. AAC – Augmentative Alternative Communication.
- d. Mather Youth Academy.

Employees in these programs possess special skills, training, and experience to provide services within these programs and as such, were not affected by the layoff.⁶ These skipping criteria were agreed to by the parties and are found to be valid. Employees in these programs were properly retained.

13. The Stipulation adjusted the seniority list data (seniority date or status) of the following employees:

Employee Name	Seniority Date or Status
Abrahamson, Christopher	January 17, 2008
Blake, Lynsey	August 9, 2005
Braun, Patti	Permanent
Downey, Lori	January 17, 2003
Laharty, Kathleen	August 6, 2007
Carey, Ryan	August 9, 2006
Fields, Terese	August 9, 2006
Supple, Kelly	August 6, 2007

⁶ The identity of certificated personnel who possess special skills, training, and experience to provide services in these programs were provided at hearing. FLES –Claudia Alfaro, Flavia Barajas, Melia Lindi Borruso, Colleen Bright, Gloria Chicca, Kelly Curtan, Pedro Perez, Sandra Spaulding, Petra Stroeve Yoly, and Carmen Triviso; TUPE – Lea Rathbun; AAC – Janet McLellan; and Mather Youth Academy - Michele Matsumura. The list may not be exclusive.

14. The Stipulation rescinds the Layoff Notices issued to the following employees:
(see Attachment C - Procedural Status Chart/Alpha 2011 which identifies employees whose
layoff notices are rescinded.)

Alfaro, Claudia
Allen Kreps, Andrea
Angelopoulos, Charles
Bailey (Attwood), Jessica
Barajas, Flavia
Bell, Christian
Bennett, James
Blake, Lynsey
Bloom, Ashley
Borruso, Melia Lindi
Braun, Patti
Bright, Colleen
Caplan, Faith
Carter, Jeffrey
Chicca, Gloria
Co, Gina
Collins, Amy
Cooling, Brian
Crannell, Greg
Cufaude, Brittany
Curtan, Kelly
Dean, Janis
Downey, Lori
Fields, Terese
Gale (Wood), Audrey
Gutierrez, Elizabeth
Halverson, Summer
Heichlinger, Amber
Hendrickson, Bernadette
Hunnicutt, Bethanee
Isbell, Don
Kamaukh, Anna
King, Christa
Lawson, Melissa
Lee, Nancy
Long, Sylvia
Maldonado, Dianne
Marcucci, Melissa
Marin, Zhanna

Matsumura, Michele
McGarvey, William
McLellan, Janet
Merz-Johnson, Gabriele
Ohlorich, Chelsea
Pajer, Christina
Perez, Pedro
Plumb, Sherry
Rathbun, Lea
Ross, Kristin
Sanchez-Okusako, Marilu
Sandner, Ann
Shippy, Janice
Spaulding, Sandra
Speer, Brian
Staton, Allison
Stroeve Yoly, Petra
Sullivan, Lana
Taylor-Miramontes, Kristine
Tippett, Robert J.
Torres, Jennifer
Trivedi, Sangita S.
Triviso, Carmen
Warrick, Kena

15. All remaining employees properly received a Notice of Layoff or Precautionary Notice of Layoff for the 2011-2012 school year. (see Attachment C - Procedural Status Chart/Alpha 2011 which identifies all employees who were noticed.)

LEGAL CONCLUSIONS

Applicable Laws

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Finding 1 through 8. All notices and other jurisdictional requirements of sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (Ed. Code, §§ 44949, subd. (a) and 44955, subd. (c); *Bakersfield Elementary Teachers v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1272.)

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular

kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Superintendent’s decision to reduce particular kinds of services was a proper exercise of her discretion.

3. The services identified in Board Resolution 02-17-11-26 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. (Attachment B.) Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The skipping and tie-breaking criteria established by the District were proper pursuant to Education Code section 44955, subdivisions (b) and (d).

5. The Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board’s Resolutions and in the Notices, adequately describes particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

6. Cause exists under Education Code sections 44949 and 44955 to provide final Notice to respondents not identified in the Stipulation for rescission, that their services will not be required in the 2011-2012 school year because of the reduction and elimination of particular kinds of services.

RECOMMENDATION

1. Notice shall be given to respondents not identified in the Stipulation for rescission, that their services will not be required in the 2011-2012 school year because of the reduction and elimination of particular kinds of services.

2. Pursuant to the Stipulation, the District shall adjust the seniority list data (seniority date or status), of the following certificated employees: (Factual Finding 13.)

Employee Name	Seniority Date or Status
Abrahamson, Christopher	January 17, 2008
Blake, Lynsey	August 9, 2005
Braun, Patti	Permanent
Downey, Lori	January 17, 2003
Laharty, Kathleen	August 6, 2007
Carey, Ryan	August 9, 2006
Fields, Terese	August 9, 2006
Supple, Kelly	August 6, 2007

3. Pursuant to the Stipulation, the District shall rescind Layoff Notices issued to the certificated employees listed in Factual Finding 14.

4. Pursuant to the Stipulation, the District Shall afford laid off employees all of the rights and protections set forth in the Education Code including but not limited to Education Code sections 44956 and 44957.

5. Pursuant to the Stipulation, respondent Hugh Sims, by signing the agreement, does not waive any administrative remedy regarding a claim for discrimination/retaliation. In the event that Mr. Sims raises a discrimination/retaliation claim, the District agrees that it will not raise a failure to exhaust administrative remedies defense as a result of Mr. Sims not raising the matter in this layoff proceeding.

6. All terms of the Stipulated agreement (Attachment D), shall become effective and binding upon obtaining signatures of all parties.

DATED: May 5, 2011

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A (page 1)
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
EMPLOYEES SERVED WITH A LAYOFF NOTICE

Abrahamson	Co, Gina	Humphrey
Alexander	Coleman	Hunnicut
Alfaro	Collins	Isbell
Allen	Collins	Jones
Allen Kreps	Cooling	Jordan
Anvarnaiinchi	Cooper	Karnaukh
Appleby	Couchman (Roome)	King
Avila	Crannell	Kirby
Bailey (Atwood)	Cross	Kleinle
Bair	Cufaude	Knecht
Barajas	Curtan	Koelzer
Bardi	Dean	Komatsu
Barth	Devore	Kuzmich
Bell	Downey	Laharty
Bennett	Earp	Lasavio
Beseda	Eckhardt	Lawson
Blake	Ettlin	Lee
Bloom	Evans	Linson
Boggs	Feiner	Lockhart
Bone	Fields	Long
Borruso	Ford	MacDonald
Botsford	Frizzell	MacTaggart
Bowles	Gale (Wood)	Magowan
Braun	Galvin	Mahdavi-Aghabeig
Brewer	Gayman	Maldonado
Bright	Gilmore	Mallett
Browning	Greco	Marcucci
Buettner	Green	Marin
Cagney	Groshong	Matsumura
Cain	Gutierrez	Mayhugh
Caplan	Halverson	McFarland
Carey	Handling	McGarvey
Carson	Hanna	McLellan
Carter	Hanrihan	McMeans
Chicca	Harnden	Mejia
Chilcutt	Heichlinger	Melton
Cisneros-Elliot	Hendrickson	Merritt
Clark	Hillel	Merz-Johnson

ATTACHMENT A (page 2)
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
EMPLOYEES SERVED WITH A LAYOFF NOTICE

Miklos, Angelica	Sullivan, Lana	
Moore, Chase	Supple, Kelly	
Mulqueeney, Rebecca	Swagerty	
Nicosia, Kristina	Taylor-Miramontes	
Oberreuter, Cari	Thomson	
Ohlerich, Chelsea	Tippett	
Olivarria-Matson, Debra	Torres	
O'Rourke, Kristin	Trenary	
Patterson, Justin	Trivedi	
Perez, Pedro	Triviso	
Perlstein, Stephanie	Vaughan	
Plumb, Sherry	Warrick	
Pushkaric, Jennifer	Watkins	
Rathbun, Lea	Werner	
Renner, Eric	Weston	
Rodriguez Burns, Debra	White	
Ross, Kristina A.	White	
Ross, Kristin D.	Whitmire	
Sadler, Merissa	Williams	
Sanchez-Okusako	Woodard	
Sandner, Ann	Yost	
Schaubmayer, Brian	Swagerty	
Scherdt (Hethcoat), Stephanie	Taylor-Miramontes	
Schmitt, Jana	Thomson	
Schultz, Heidi	Tippett	
Seal-Mayr, Mathew	Torres	
Sheffield, Chrystin	Trenary	
Shields, Keith	Trivedi	
Shippy, Janice	Triviso	
Simpson, Rennie	Vaughan	
Sims, Hugh	Warrick	
Smith, Christopher	Watkins	
Smith (Curtis), Kathrine	Werner	
Spaulding, Sandra	Weston	
Speer, Brian	White	
Spencer, Elicia	White	
Staton, Allison	Whitmire	
Stroeve Yoly, Petra	Williams	
Struebing, Michael	Woodard	

ATTACHMENT B
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
PKS Resolution No. 02-17-11-26

District Wide Services	FTE
Counselors	8.5
District Office Administrators	1.5
Nurses	3.8
Principals	0.5
Program Specialists	1.0
Psychologists	2.0
Speech Pathologist	4.1
Special Education – Mild/Moderate	12.5
Special Education – Moderate/Severe	3.0
Vice Principal	2.0
Elementary – Grades K-8	FTE
Music Prep	1.37
Newcomer	1.0
Opportunity	1.0
Physical Education Prep	1.0
Self-Contained	12.3
Secondary – Grades 9-12	FTE
Art	2.43
Business/Computer Apps	1.8
Drama	0.8
English	3.29
French	0.4
German	0.2
Home Economics	0.4
Math	3.0
Military Instructor	1.0
Science, Chemistry	0.2
Science, Life	5.0
Science, Physical	0.4
Social Science	4.0
Spanish	0.4
District Total	78.89